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MAR 10 1979

EQUIPMENT LEASE

between

THE BANK OF NEW YORK,  
Lessor,

and

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,  
Lessee

Dated as of March 1, 1979

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## EQUIPMENT LEASE

EQUIPMENT LEASE dated as of March 1, 1979 between THE BANK OF NEW YORK (referred to herein as the "Lessor"), a New York banking corporation having its principal office and place of business at 48 Wall Street, New York, New York 10015, and ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY (referred to herein as the "Lessee"), a Missouri corporation having its principal office and place of business at 3253 East Trafficway, Springfield, Missouri 65802.

### SECTION 1. DEFINITIONS.

For all purposes of this Lease, the following terms shall have the following meanings:

Additional Rent: as defined in section 5(b).

Agent: La Salle National Bank, a national banking association, in its capacity as agent under the Participation Agreement, and its successors as agent thereunder.

Agent's Available Funds: the funds held by the Agent which, pursuant to section 2.4 of the Participation Agreement, may be applied to the payment of amounts equal to the Conditional Sale Indebtedness in respect of units of the Equipment being delivered to the Lessor at an Equipment Closing.

Base Rent: in the aggregate, the amounts of rent payable by the Lessee under sections 3.2 and 3.3.

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Illinois, Missouri or New York are required or authorized by law to be closed.

Casualty Occurrence: as defined in section 9.2(a).

Casualty Value: as defined in section 9.2(b).

Certificate of Acceptance: as defined in section 2.1.

Conditional Sale Agreement: The Conditional Sale and Reconstruction Agreement, dated as of the date hereof, among the Lessee (in its capacity, and referred to therein, as the "Builder"), the Agent and the Lessor (in its capacity, and referred to therein, as the "Owner"), providing for (a) the sale of the New Equipment to the Owner by the Builder and the assignment of the Builder's interest therein to the Agent and (b) the reconstruction of the Hulks by the Builder into the Reconstructed Equipment and the sale of the Agent's interest therein to the Owner, in substantially the form of Exhibit B to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Conditional Sale Default: any event or condition which after the giving of notice or the lapse of time or both would become a Conditional Sale Event of Default.

Conditional Sale Event of Default: any of the events or conditions defined as "Events of Default" in section 17 of the Conditional Sale Agreement.

Conditional Sale Indebtedness: in the aggregate, the amount of the indebtedness of the Owner to the Agent under sections 5.1(a) and 5.2(a) of the Conditional Sale Agreement.

Cut-off Date: the earliest of (a) the date of the Equipment Closing with respect to the 165th unit of the Equipment, (b) the date of a Declaration of Default pursuant to section 17 of the Conditional Sale Agreement and (c) November 30, 1979.

Default: any event or condition which after the giving of notice or the lapse of time or both would become an Event of Default.

Equipment: collectively, the New Equipment and the Reconstructed Equipment, and any additions, modifications or improvements thereto as provided in section 12.2.

Equipment Closing: as defined in section 4.1 of the Conditional Sale Agreement.

Event of Default: as defined in section 17.

Funding Date: as defined in section 2.3 of the Participation Agreement.

Hulk Purchase Agreement: the Hulk Purchase Agreement, dated as of the date hereof, between the Lessee (in its capacity, and referred to therein, as the "Seller") and the Lessor (in its capacity, and referred to therein, as the "Owner"), providing for the purchase by the Owner of the Hulks from the Seller, in substantially the form of Exhibit E to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Hulk Purchase Price: the price payable by the Lessor for each Hulk purchased pursuant to the Hulk Purchase Agreement.

Hulk Rent: as defined in section 4.

Hulks: collectively, the 40 used and unreconstructed racks for the transportation of automobiles and other equipment on railroad rolling stock which are the subject of the Hulk Purchase Agreement.

Interim Rent: as defined in section 3.1.

Lease Assignment: the Assignment of Lease and Agreement, dated as of the date hereof, assigning all the Lessor's right, title and interest in, to and under this Lease to the Agent, in substantially the form of Exhibit D to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Leased Equipment: collectively, the units of the New Equipment and the Reconstructed Equipment delivered to and accepted by the Lessor as provided in the Conditional Sale Agreement (such units being listed in Schedules I and II, respectively, to this Lease) and leased to the Lessee under this Lease and any unreconstructed Hulks subjected to this Lease pursuant to section 4.

Lender: Teachers Insurance and Annuity Association of America, a New York corporation, and its successors and assigns.

Lenders: the Lender and any transferee (or subsequent transferee) of all or any part of the Lender's interest in the Conditional Sale Indebtedness.

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

New Equipment: collectively, the 125 new tri-level enclosed racks, constructed pursuant to, and bearing the serial numbers set forth in Schedule I to, the Conditional Sale Agreement, for the transportation of automobiles and other equipment on railroad rolling stock.

Officers' Certificate: a certificate signed by the Chairman of the Board or the President or any Vice President and by any other Vice President or any Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the party delivering such certificate, provided that, in the case of a certificate being delivered by the Lessee, at least one of the signatories shall be the President, the Vice President-Finance or the Treasurer.

Participation Agreement: the Participation Agreement, dated as of the date hereof, among the Lessor, the Agent, St. Louis-San Francisco Railway Company and the Lender, as from time to time amended, modified or supplemented in accordance with its terms.

Purchase Price: with respect to each unit of the Leased Equipment, the Invoiced Purchase Price for such unit as defined in the Conditional Sale Agreement.

Reconstructed Equipment: collectively, the Hulks as reconstructed by the Builder pursuant to, and bearing the serial numbers set forth in Schedule II to, the Conditional Sale Agreement.

Rent Payment Date: the date of the sixth calendar month following the Cut-off Date corresponding with the Cut-off Date and the same date of each sixth calendar month thereafter (or if any such month does not have a corresponding date, then the date of the last day of such month).

## SECTION 2. LEASE AND DELIVERY OF LEASED EQUIPMENT; LEASE SUBJECT TO CONDITIONAL SALE AGREEMENT.

2.1 Lease and Delivery of Leased Equipment.  
The Lessor agrees to lease to the Lessee each unit of the New Equipment and of the Reconstructed Equipment delivered to and accepted by the Lessor at an Equipment Closing under the Conditional Sale Agreement. The Lessor shall deliver or cause to be delivered each such unit



of the Equipment to be subjected to this Lease at the place within the United States of America at which such unit is delivered to the Lessor under the Conditional Sale Agreement. Upon delivery of a unit of the Equipment to the Lessee, the Lessee will cause an authorized representative or representatives of the Lessee to inspect such unit and, if such unit is found to be in good order and in conformity with the specifications and requirements referred to in section 2.1 or 3.1, as the case may be, of the Conditional Sale Agreement, and marked in accordance with the provisions of section 11, to accept delivery of such unit on behalf of the Lessee and to execute and deliver a certificate (a "Certificate of Acceptance") with respect thereto, whereupon such unit shall be deemed to have been delivered to and accepted by the Lessor under the Conditional Sale Agreement and to have been delivered to and accepted by the Lessee under this Lease, and such unit shall thereafter be subject to all of the terms and conditions of this Lease and shall constitute a unit of the "Leased Equipment".

#### 2.2 Lease Subject to Conditional Sale Agreement.

All rights and obligations of the Lessee under this Lease and in and to the Leased Equipment are subject to the rights of the Agent under the Conditional Sale Agreement, and, if a Conditional Sale Event of Default shall have occurred, the Agent may terminate this Lease (or rescind its termination) as provided in section 17 of the Conditional Sale Agreement and may exercise any of its rights and remedies as provided in section 17 of this Lease and in the Lease Assignment and the Conditional Sale Agreement.

### SECTION 3. RENTALS.

3.1 Interim Rent. The Lessee shall make a rental payment (which payment shall constitute a payment of "Interim Rent") to the Lessor on the Cut-off Date in an amount equal to (a) the sum of the products of the Purchase Price of each unit of the Leased Equipment multiplied by .0263888% for each calendar day elapsed from and including the date of the Equipment Closing in respect of such unit to but not including the Cut-off Date plus (b) the sum of the amounts, if any, payable by the Lessor (i) under section 9.4 of the Participation Agreement (to the extent not covered by clause (a) of this section 3.1), and (ii) in respect of any investment deficiencies under section 9.1 of the Participation Agreement.

3.2 Base Rent for New Equipment. The Lessee shall make rental payments (which payments shall constitute payments of "Base Rent") to the Lessor for the units of the New Equipment subject to this Lease in 24 semiannual payments each in an amount equal to the sum of the products of the Purchase Price of each unit of the New Equipment multiplied by 5.05%, one such payment to be made on each Rent Payment Date until all such payments have been made.

3.3 Base Rent for Reconstructed Equipment. The Lessee shall make rental payments (which payments shall constitute payments of "Base Rent") to the Lessor for the units of the Reconstructed Equipment subject to this Lease in 20 semiannual payments each in an amount equal to the sum of the products of the Purchase Price of each unit of the Reconstructed Equipment multiplied by 6.507%, one such payment to be made on each Rent Payment Date until all such payments have been made.

3.4 Rental Assumptions. The rental rates set forth in sections 3.1, 3.2 and 3.3 have been calculated on the assumption that (a) there will be provided by the Agent out of Agent's Available Funds 69.600975% of the Purchase Price of each unit of the New Equipment and 72.085344% of the Purchase Price of each unit of the Reconstructed Equipment; (b) there shall be paid by the Lessor 30.399025% of the Purchase Price of each unit of the New Equipment and 27.914656% of the Purchase Price of each unit of the Reconstructed Equipment; (c) the interest payable on the Conditional Sale Indebtedness shall be 9.5% per annum; (d) the acceptance dates for the Equipment will occur during the period set forth in Schedule III to the Conditional Sale Agreement; (e) at least 45 days shall elapse between the date of the Equipment Closing with respect to the last unit of the New Equipment and the Cut-off Date; (f) the aggregate Purchase Price of the Reconstructed Equipment subject to this Lease will constitute not more than 20% and not less than 15% of the aggregate Purchase Price of all units of the Leased Equipment on the Cut-off Date; and (g) the aggregate Reconstruction Cost of all units of the Reconstructed Equipment subject to this Lease shall constitute not less than 640% nor more than 778.8% of the aggregate Hulk Purchase Price of such units. If for any reason any of such assumptions shall be incorrect at any time, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule III hereto will be adjusted, if necessary in the Lessor's opinion, in order that the

Lessor's after-tax return on and rate of recovery of investment on the basis of generally accepted accounting principles and the annual net cash flows (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Lessor in originally evaluating this transaction) will not be increased or decreased by reason thereof, provided that the rentals and Casualty Value percentages, as so adjusted, shall at all times be sufficient to satisfy the obligations of the Lessor under the Conditional Sale Agreement, including its obligations with respect to the payment of Conditional Sale Indebtedness, notwithstanding any limitation of liability contained therein. Prior to making any such adjustment, the Lessor shall provide the Lessee and the Agent with a certificate of an officer of the Lessor setting forth in reasonable detail the amount and computation of such adjustment and certifying as to compliance with the proviso to the preceding sentence.

SECTION 4. RENTAL OF HULKS; DISPOSITION  
OF NON-COMPLETED HULKS.

(a) In the event that by November 30, 1979 any unit of the Hulks shall not have been reconstructed and delivered to the Lessor under the Conditional Sale Agreement (a "Non-completed Hulk"), the Lessee, commencing with the date of payment of the Hulk Purchase Price by the Lessor pursuant to the Hulk Purchase Agreement, shall lease such unit from the Lessor, and shall accept delivery of such unit at the place or places within the United States of America where such unit was delivered under the Hulk Purchase Agreement. The Lessee shall make rental payments (which payments shall constitute payments of "Hulk Rent") to the Lessor for the Non-completed Hulks in semiannual payments, each in an amount equal to the sum of the products of the Hulk Purchase Price of each unit of the Non-completed Hulks multiplied by an effective annual rate of 1% over the Lessor's prime rate, one such payment to be made on each Rent Payment Date until (and such rental shall be pro-rated upon) the earlier of (i) December 1, 1982, or (ii) sale of the Noncompleted Hulks in accordance with section 4(b), or (iii) other disposition of the Hulks pursuant to the mutual consent of the Lessor and the Lessee.

(b) The Lessor, in its sole discretion, may direct the Lessee, as agent for the Lessor, to sell the units of the Non-completed Hulks to a party other than

the Lessee or any affiliate of the Lessee on or before such date as the Lessor may direct at the highest cash price obtainable on such date. In the event such sale is not effected by December 1, 1982, Lessee shall sell such Non-completed Hulks as scrap. On the next Business Day immediately succeeding the date of any such sale, the Lessee will pay to the Lessor the net proceeds from such sale and, if such net proceeds are less than the aggregate Hulk Purchase Price of the Non-completed Hulks, the Lessee will, as liquidated damages and not as a penalty, for failure to complete the reconstruction of the Non-completed Hulks as provided in the Conditional Sale Agreement, pay to the Lessor within 30 days of such sale date an amount equal to the difference between the net proceeds of such sale and the aggregate Hulk Purchase Price of the Non-completed Hulks. The Lessor agrees to furnish to the Lessee all such bills of sale, without recourse or warranty, to enable the Lessee to effect the sale of the Non-completed Hulks for the account of the Lessor as aforesaid.

#### SECTION 5. MAKING RENTAL PAYMENTS; ADDITIONAL RENTS.

(a) Each payment of Interim and Base Rent pursuant to sections 3.1, 3.2 and 3.3, each payment of Hulk Rent pursuant to section 4 and each other payment payable to the Lessor under this Lease shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, in immediately available funds and by 11:00 a.m., New York time, on the date set forth for such payment in this Lease, at the office of the Lessor at 48 Wall Street, New York, New York 10015 (or to such other person as the Lessor may from time to time direct in writing). If the date on which any such payment is to be made is not a Business Day, such payment shall be made on the next succeeding Business Day.

(b) The Lessee will also pay, from time to time as provided in this Lease or on demand of the Lessor, as additional rent ("Additional Rent"), (i) all other amounts, liabilities and obligations which the Lessee herein assumes or agrees to pay, (ii) interest (to the extent legally enforceable) at the rate of 10.5% per annum on such of the foregoing amounts, liabilities and obligations as are payable to the Lessor and are not paid within 10 days of the date when due or the date of such demand, as the case may be, from such date until payment thereof, and (iii)

interest (to the extent legally enforceable) at the rate of 10.5% per annum on all overdue installments of Interim Rent and Base Rent and at an effective annual rate of 2% over the Lessor's prime rate on all overdue installments of Hulk Rent, from the due date thereof until payment. In the event of any failure on the part of the Lessee to pay any Additional Rent, the Lessor shall have all rights, powers and remedies provided for in this Lease or at law or in equity or otherwise in the case of non-payment of the Base Rent.

#### SECTION 6. NO COUNTERCLAIM, ABATEMENT, ETC.

This Lease is a net lease and the Interim Rent, Base Rent and Hulk Rent shall be absolutely net to the Lessor so that this Lease shall yield to the Lessor the full amount of the installments of Interim Rent, Base Rent and Hulk Rent throughout the term of this Lease without deduction. The Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or under the Conditional Sale Agreement, or against St. Louis-San Francisco Railway Company, in its capacity as the Builder under the Conditional Sale Agreement, or the Agent or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the units of the Leased Equipment or damage to or loss of possession or loss of use or destruction of all or any of such units from whatsoever cause, any Liens with respect to any of such units, the prohibition of or other restriction against the Lessee's use of all or any of such units, the taking or requisitioning of any of such units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessor or the Lessee, any failure on the part of the Lessor to perform or comply with any of the terms hereof or of any other agreement with the Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other

amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the units of Leased Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

#### SECTION 7. TERM OF EQUIPMENT RENTAL.

The term of this Lease as to each unit of the Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such unit and shall continue, in the case of the New Equipment, for 12 years, and, in the case of the Reconstructed Equipment, for 10 years, after the Cut-off Date, unless this Lease is earlier terminated as provided herein.

#### SECTION 8. TAXES.

8.1 Lessee's General Tax Indemnity. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax, and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state and city income taxes and franchise taxes measured by net income [except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided]), or license fees, assessments, documentary stamp taxes, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions") now or hereafter levied or imposed upon or in connection with or

measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title or interest under the terms hereof or of the Conditional Sale Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to all other amounts payable by the Lessee under this Lease. The Lessee will also pay promptly all Impositions which may be imposed upon the Leased Equipment or any unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of the Lessor's ownership thereof and will keep at all times all and every part of the Leased Equipment free and clear of all Impositions which might in any way affect the security interest of the Agent or result in a Lien upon all or any part of the Leased Equipment, provided that the Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Lessor and the Agent) and by appropriate legal proceedings such Impositions, and the nonpayment thereof does not, in the opinion of the Lessor and the Agent, adversely affect the title, property or rights of the Lessor hereunder or the security interest or rights of the Agent or the Lender in or to the Leased Equipment or otherwise under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor upon presentation of an invoice therefor.

(b) In the event that the Lessor shall become obligated to make any payment to the Agent pursuant to section 8 of the Conditional Sale Agreement not covered by subdivision (a) of this section 8.1, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to section 8 of the Conditional Sale Agreement.

(c) In the event any reports with regard to Impositions are required to be made on the basis of individual units of Leased Equipment or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interests of the Lessor and the Agent in such units as shall be satisfactory to the Lessor and the Agent or, where not so permitted, will notify the Lessor and the Agent of such requirement and will prepare and deliver such reports to the Lessor and the Agent within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Agent.

(d) In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this section 8.1, based upon any time period during the term of this Lease or any renewal hereof, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

(e) All amounts paid by the Lessee pursuant to this section 8.1 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

8.2 Lessee's Special Tax Indemnity. It is agreed by and between the Lessee and the Lessor that they have assumed in their negotiations that an opinion of Lessee's Chief Mechanical Officer to the effect described in the last paragraph of this section 8.2 will be provided to the Lessor; and that for the purpose of determining its liability for federal income taxes and its liability for state and local income taxes based upon and measured by federal taxable income the Lessor, as the owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code") to an owner of property, including without limitation (a) deductions for depreciation of each unit of the Equipment under section 167 of the Code commencing in the year that such unit is delivered to the Lessor under the Conditional Sale Agreement computed on the basis (i) that each such unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such unit, (ii) with respect to each unit of the New Equipment and with respect to the Reconstruction Cost (as defined in the Conditional Sale Agreement) of each unit of the Reconstructed Equipment, initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b)(2) and (3) of the Code, and, with respect to the Hulk Purchase Price of each unit of the Reconstructed Equipment, initially of the declining balance method, using a rate equal to 150% of the straight line rate, switching to the straight line method, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation § 1.167(a)-11 and (iv) of an asset depreciation



period of 12 years (the "ADR Deductions"), (b) deductions with respect to interest on the Conditional Sale Indebtedness when paid or accrued in respect of the Equipment, pursuant to section 163 of the Code (the "Interest Deductions"), (c) the investment credit with respect to each unit of the Equipment pursuant to section 38 of the Code in the year that such unit is delivered to the Lessor under the Conditional Sale Agreement, with respect to each unit of the New Equipment, equivalent to 10% of the Purchase Price of such unit, and with respect to each unit of the Reconstructed Equipment, equivalent to 10% of the Reconstruction Cost of such unit (the "Investment Credit"), and (d) that for federal income tax purposes all amounts includible in the gross income of the Lessor with respect to the Equipment and all deductions allowable to the Lessor with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States. The Lessor and the Lessee agree that, for the purposes of this section 8.2 only and without derogating from the Lessee's covenant contained in section 13(b), the only expected use, if any, of each unit of the Equipment outside the United States is use in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

The Lessee represents and warrants that (i) each unit of the New Equipment constitutes property the entire Purchase Price of which qualifies for the Investment Credit and each unit of the Reconstructed Equipment constitutes property the entire Reconstruction Cost of which qualifies for the Investment Credit; (ii) at the time the Lessor becomes the owner of a unit of the Equipment, such unit will constitute "new section 38 property" (except that in the case of a unit of the Reconstructed Equipment, only the portion of such Equipment financed by the Reconstruction Cost of such unit will constitute "new section 38 property") within the meaning of section 48(b) of the Code and at the time the Lessor becomes the owner of a unit of the Equipment, such unit will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor (except that in the case of a unit of the Reconstructed Equipment, only the portion of such unit financed by the Reconstruction Cost of such unit will not have been so used); (iii) at all times during the term of this Lease, each unit of Equipment will constitute "section 38 property" within the meaning of section 48(a) of the Code and will not be used predominantly outside the United States within

the meaning of said section 48(a) (or any exception there-to); and (iv) the Lessee will maintain sufficient records to verify such use and will supply such records to the Lessor as promptly as reasonably possible after receipt of each written request therefor.

If, for federal income tax purposes, and for the purpose of determining the Lessor's liability for state and local income taxes based upon and measured by federal taxable income, as a result of any reason whatsoever (except as provided below) (a) the Lessor shall not be entitled to or shall suffer a disallowance or recapture of all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clauses (a) or (b) of this paragraph being hereinafter called a "Loss"), then the Lessee, after receiving written notice from the Lessor of such Loss together with a certificate of an officer of the Lessor setting forth in reasonable detail the computations and methods used in calculating such Loss (such notice and certificate being hereinafter collectively called the "Net Return Notice", which Net Return Notice may not be delivered more than 30 days after the receipt by the Lessor of notice of the disallowance or recapture with respect to such Loss shall, at its option, either (i) commencing with the next rental payment date occurring more than 30 days after receipt by the Lessee of the Net Return Notice pay additional rent to the Lessor on each rental payment date under this Lease over its remaining term in order that, after deducting all taxes required to be paid by the Lessor by reason of the payment of such additional rent, the Lessor will realize its originally contemplated after tax net return with respect to this transaction, or (ii) pay within 30 days of receipt of the Net Return Notice in a lump sum, the amount required to provide the Lessor with its contemplated after tax net return with respect to the transaction. If the option under the foregoing clause (i) is selected then the amount of the rentals under this Lease will be appropriately adjusted in order that the Lessor's after tax net return (computed using the same method and the same assumptions [except for such assumptions which shall have changed as a result of such Loss], including, without limitation, tax rates, as were utilized by the Lessor in originally evaluating this transaction) will be the same as such after tax net return would have been if such Loss had not occurred. In computing the Lessor's originally contemplated after tax net return

under clause (i) or (ii) above, the Lessor shall take into account any federal, state and local income tax benefits accruing to the Lessor in any year during the term of this Lease as a result of such Loss.

Any late payment by any party hereto of any of its obligations under this section 8.2 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 1% over the Prime Rate or such lesser maximum rate permitted by law. "Prime Rate" as used herein shall mean the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(a) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of the Lease) of a unit of the Equipment or of the interest of the Lessor in a unit of the Equipment or the rentals in respect thereof under the Lease, or any transfer or disposition of a unit of the Equipment or of the interest of the Lessor in a unit of the Equipment or the rentals in respect thereof under the Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Lessor is the debtor, unless, in each case, such transfer or disposition is made as a direct result of an Event of Default which has occurred and is continuing;

(b) the failure of the Lessor to claim in a timely and proper manner (including making all appropriate elections under the Code or applicable Income Tax Regulations, rulings, etc.) the Investment Credit, the ADR Deductions or the Interest Deductions or any foreign tax credit or to treat any item of

income or deduction with respect to the Equipment as derived from, or allocable to, sources within the United States, or to make a timely election, if permitted by the Code, applicable Income Tax Regulations, rulings, etc., to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States;

(c) the failure of the Lessor to have sufficient liability for federal income tax against which to credit the Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable, but only to the extent that such credit or benefit would not be lost if the Lessor had such sufficient liability or income;

(d) any residual sharing, guarantee agreement or other voluntary act of the Lessor (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Participation Agreement, the Conditional Sale Agreement or this Lease;

(e) a change in the form or type of organization or permissible activities or the taxable status of the Lessor;

(f) a Casualty Occurrence with respect to a unit of Equipment, if the Lessor shall have received the amounts stipulated in respect of such Casualty Occurrence hereunder;

(g) any amendment to, or change in, the federal tax statutes, regulations, revenue rulings, revenue procedures or similar rules, (x) in the case of a Loss relating to a unit of the New Equipment, which change or amendment is enacted or effective after the delivery to the Lessor of such unit under the Conditional Sale Agreement, and (y) in the case of a Loss relating to a Hulk or a unit of the Reconstructed Equipment, which change or amendment is enacted or effective after the commencement of reconstruction with respect to the related Hulk under the Conditional Sale Agreement;

(h) a foreclosure by any person holding through the Lessor a lien on a unit of the Equipment, which foreclosure does not result from an act of the Lessee or from an Event of Default;

(i) the failure of the Lessor to take timely action in contesting in good faith any adjustment or proposed adjustment or inclusion referred to in the sixth or ninth paragraphs of this section 8.2 if such contest is required pursuant to either such paragraph;

(j) any misrepresentation made by the Lessor in this Lease or any other instrument, agreement, certificate, statement or other document delivered pursuant hereto or in connection herewith;

(k) any act or omission of the Lessor inconsistent with the Lessor's claim of the Investment Credit, the ADR Deductions, the Interest Deductions or the United States source of any income or deductions with respect to the Equipment unless such act or omission is specifically required by the Participation Agreement, the Conditional Sale Agreement or this Lease; or

(l) a disqualifying change in the nature of the Lessor's business or the liquidation thereof.

If after the conclusion of an audit the Lessor receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item in respect of which the Lessee may be required to indemnify the Lessor under this section 8.2, the Lessee shall not be required to indemnify the Lessor unless and until the Lessor takes the action set forth below, provided that at any time, whether before or after commencing to take such action, the Lessor may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to such adjustment or any such portion specified in such notice. Upon receipt of the 30-day-letter, the Lessor shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days thereafter of a written request to do so from the Lessee and, if requested by the Lessor, an opinion of the Lessee's independent tax counsel in form and substance reasonably satisfactory to Lessor and its counsel to the effect that there is a reasonable basis for contesting such proposed adjustment, the Lessor shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Lessor in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Lessor shall

promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee and an opinion of Lessee's independent tax counsel, in form and substance reasonably satisfactory to Lessor and its counsel, to the effect that there is a reasonable basis for contesting such final adjustment, the Lessor shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Lessor to appeal the decision of such court or of an intermediate appellate court and such request is accompanied by an opinion of Lessee's independent tax counsel, in form and substance reasonably satisfactory to Lessor and its counsel, to the effect that there is a reasonable prospect of successfully appealing such decision, the Lessor shall appeal such decision. The Lessor, in its sole discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Lessor shall not be required to take any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to the Lessor for any expense including, without limitation attorneys' and accountants' fees and expenses, which the Lessor may incur as a result of taking such action. In any contest pursuant to this paragraph, the Lessor shall prosecute such contest diligently and in good faith shall keep the Lessee reasonably informed of the status thereof from time to time. In the event that the Lessor pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee shall not be required to make any payment pursuant to the third paragraph of this section 8.2 until the completion of any proceeding pursuant to this paragraph, but in such event the Lessee agrees to pay the Lessor an amount equal to interest at the rate per annum equal to 1% above the Prime Rate (or such lesser maximum rate permitted by law) on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment (whether by appeal or otherwise), such amount to be payable in equal installments within each calendar year on the dates on which rental for such period is payable under this Lease. Upon receipt by the Lessor of a refund of any tax paid by it in respect of which the Lessee has paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Lessor, an amount equal to the aggregate amount of such interest paid on the amount of such refund

shall be paid by the Lessor to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this section 8.2 shall become fixed and determinable.

Notwithstanding the foregoing provisions of this section 8.2, if there is any amendment to, or change in, the federal tax statutes, regulations, revenue rulings, revenue procedures or similar rules (including, without limitation, a change in tax rates) which is enacted (x) in the case of a unit of the New Equipment, prior to the delivery to the Lessor of such unit under the Conditional Sale Agreement, and (y) in the case of a Hulk or a unit of Reconstructed Equipment, after commencement of reconstruction with respect to the related Hulk under the Conditional Sale Agreement, and as a result of such amendment or change the anticipated tax benefits to the Lessor are increased or decreased, then the amount of the rentals under this Lease will be appropriately adjusted in order that the Lessor's after tax net return (computed using the same method and the same assumptions [except for such assumptions which shall have changed as a result of any such amendment or change], including, without limitation, tax rates, as were utilized by the Lessor in originally evaluating this transaction) will not be increased or decreased by reason of such amendment or change, and the tax assumptions specified in the first paragraph of this section 8.2 for purposes of determining the tax indemnities payable to the Lessor will be appropriately adjusted to reflect such change, provided that the rentals, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the Conditional Sale Agreement, notwithstanding any limitation of liability contained therein. The adjustments to the amount of the rentals under this Lease pursuant to this paragraph shall be computed by the Lessor, and in this connection the Lessor shall provide the Lessee and the Agent with a certificate of an officer of the Lessor setting forth in reasonable detail the amount and computation of such adjustments and certifying as to compliance with the proviso to the preceding sentence.

For purposes of this section 8.2, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for federal income tax purposes.

If at any time prior to the disposition of a unit of the Equipment in a taxable transaction, the Lessor is required to include in its gross income an amount in respect

of any improvement and/or addition to such unit of the Equipment made by the Lessee which is not readily removable from such unit without causing material damage to such unit (such improvements or additions being hereinafter called "Improvements"), then the Lessee shall pay to the Lessor, within 30 days after payment by the Lessor of Lessor's additional taxes described later in this sentence, as an indemnity, such amount or amounts which, after deduction therefrom of all taxes required to be paid by the Lessor in respect of the receipt of such amount or amounts under the laws of any federal, state or local government or taxing authority of the United States, shall be equal to the sum of the additional federal, state and local income taxes payable by the Lessor from time to time as a result of such Improvement plus the amount of any interest, penalties or additions to tax (including any additions to tax because of underpayment of estimated tax) payable as a result of any such Improvement (less any federal, state or local tax benefits resulting to the Lessor from payment of any amounts reimbursed hereunder). If as a result of any such Improvement the federal, state and local income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had not such Improvement been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional federal, state or local income tax benefits realized by the Lessor as a result of any payment made pursuant to this sentence. For purposes of computing any amounts payable to the Lessor and any amounts payable to the Lessee pursuant to this paragraph, the statutory rate of federal, state or local income tax, as the case may be, shall be used. The amount payable to the Lessor pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Lessor (but not prior to payment by the Lessor of the additional federal, state and local income taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Lessor pursuant to this paragraph shall be paid within 30 days after the Lessor realizes any such savings in its federal, state and local income taxes or additional tax benefits, as the case may be. The Lessor agrees to contest the inclusion in its gross income of any amount with respect to an Improvement to the extent, and under the circumstances (including, without limitation, the rendition of opinions to the Lessor and the payment of interest by the Lessee), set forth in the sixth paragraph of this section 8.2 as if such inclusion were a Loss.



In the event that any indemnity payments are required to be made by the Lessee, or in the event the amount of rentals under this Lease are adjusted, pursuant to any paragraph of this section 8.2, then the applicable Casualty Values set forth in Schedule III to this Lease shall be appropriately adjusted by the Lessor (but in no event shall the applicable Casualty Values be reduced below the corresponding Casualty Values required pursuant to section 9.2 of the Conditional Sale Agreement). The adjustments required to be made pursuant to this paragraph shall be made by the Lessor and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Lessor in originally evaluating this transaction, and in connection therewith, the Lessor shall provide the Lessee and the Agent with a certificate of an officer of the Lessor setting forth in reasonable detail the figures and methods used in making such calculations and certifying as to compliance with the parenthetical in the preceding sentence. In the case of any such adjustments in the applicable Casualty Values set forth in Schedule III to this Lease, if any payment of such Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Lessor the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Lessor shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. In addition, if the Lessor shall incur a Loss after the Lessee shall have paid Casualty Value in respect of a unit, then the Lessor shall not be entitled to a payment pursuant to this section 8.2 to the extent that the Lessor shall have been made whole against such Loss by reason of such payment of Casualty Value. The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this section 8.2 shall survive the expiration or other termination of this Lease.

The Lessee shall have the right, upon demand, to have an independent party selected by the Lessee and approved by the Lessor, which approval shall not be unreasonably withheld, review any calculations made by the Lessor to determine the consistency and reasonableness of the methods and the assumptions used in such calculations with those used by the Lessor in originally evaluating this transaction and the accuracy of such computations based on such methods and assumptions.

The Lessee agrees to furnish promptly after the date hereof to the Lessor a written opinion of the Lessee's Chief Mechanical Officer to the effect that each unit of the New Equipment has an estimated useful life of at least 16 years and each unit of Reconstructed Equipment has an estimated useful life of at least 14 years and an estimated fair market value at the end of the lease term with respect to such unit (without including in such value any increase or decrease for inflation or deflation, and after subtracting from such value any cost to the Lessor for removal and delivery of possession of such unit to the Lessor at the end of the lease term) of at least 20% of the Purchase Price of such unit.

#### SECTION 9. MAINTENANCE OF LEASED EQUIPMENT; CASUALTY OCCURRENCES; INSURANCE.

9.1 Maintenance and Repair. The Lessee agrees that, at its own cost and expense, it will maintain and keep each unit of the Leased Equipment in good operating order, repair and condition.

9.2 Casualty Occurrences. (a) In the event that any unit of the Leased Equipment shall be or become lost, stolen, destroyed or, in the good faith opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease with respect to such unit or by any other governmental entity resulting in loss of possession by the Lessee for a period of at least 90 consecutive days or until the end of the term of this Lease with respect to such unit (each such occurrence being referred to herein as a "Casualty Occurrence"), the Lessee shall promptly and fully inform the Lessor and the Agent in writing in regard thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such unit until the Rent Payment Date listed in Schedule III hereto next succeeding such notice. On such Rent Payment Date the Lessee shall pay to the Lessor the Casualty Value (as hereinafter defined) of such unit as of the date of such payment in accordance with Schedule III hereto. Upon the making of all such payments by the Lessee in respect of any unit, the rental for such unit shall thereafter cease to accrue, the term of this Lease as to such unit shall terminate and (except in the case of the loss, theft or complete destruction of such unit) the Lessor shall be entitled to recover possession of such unit. The Lessor hereby appoints the Lessee

its agent, and the Lessee hereby agrees at its own cost and expense, to dispose of any unit of the Leased Equipment suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures, and, provided that the Lessee has previously paid the Casualty Value with respect to such unit to the Lessor, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such unit, but the Lessee shall pay any excess to the Lessor.

(b) The "Casualty Value" of each unit of the New Equipment or the Reconstructed Equipment, as the case may be, subject to this Lease and suffering a Casualty Occurrence shall be an amount equal to that percentage of the Purchase Price of such unit as is set forth in Table A or Table B, as the case may be, of Schedule III hereto opposite the date on which payment is to be made as aforesaid.

(c) Whenever any unit of Leased Equipment shall suffer a Casualty Occurrence at the end of the term of this Lease with respect to such unit or after termination of this Lease and while the risk of loss is with the Lessee as provided in section 21, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to a percentage (24% in the case of the New Equipment and 21% in the case of the Reconstructed Equipment) of the Purchase Price of such unit. Upon the making of any such payment by the Lessee in respect of any such unit (except in the case of the loss, theft or complete destruction of such unit), the Lessor shall be entitled to recover possession of such unit. The Lessor hereby appoints the Lessee its agent, and the Lessee hereby agrees at its own cost and expense, to dispose of any such unit suffering such Casualty Occurrence, or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures, and, provided that the Lessee has previously paid the Casualty Value with respect to such unit to the Lessor, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such unit, but the Lessee shall pay any excess to the Lessor.

(d) Except as otherwise provided in this section 9.2, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, any Casualty Occurrence to any unit of

the Equipment after delivery to and acceptance thereof by the Lessee hereunder.

9.3 Insurance. (a) The Lessee will, at all times prior to the return of the Leased Equipment to the Lessor, as provided in section 21, at its own expense, maintain or cause to be maintained property damage insurance in respect of the Leased Equipment insuring against loss or damage to the Leased Equipment from such risks and in such amounts as the Lessee would, in the prudent management of its properties, maintain or cause to be maintained with respect to similar property owned or operated by it. Notwithstanding the provisions of the foregoing sentence, the Lessee may self-insure against such risks by deductible provisions if (i) the units of the Leased Equipment are self-insured to no greater extent than any similar equipment owned or operated by the Lessee, and (ii) in the event of loss or damage affecting both units of the Leased Equipment and other property owned or operated by the Lessee, no more than a pro rata portion of such self-insurance would be applicable to the units of the Leased Equipment.

(b) The Lessee will, at all times prior to the return of the Leased Equipment to the Lessor, as provided in section 21, at its own expense, maintain or cause to be maintained public liability insurance (including contractual liability for the benefit of the Lessor) in respect of the Leased Equipment insuring against loss or damage to the person and property of others from such risks and in such amounts as the Lessee would, in the prudent management of its business, maintain or cause to be maintained with respect to similar equipment owned or operated by it, provided that such insurance shall provide coverage in the amount of not less than \$10,000,000 per any one occurrence. Notwithstanding the provisions of the foregoing sentence, the Lessee may self-insure against such risks by deductible provisions not to exceed \$1,500,000 per any one occurrence if (i) the units of the Leased Equipment are self-insured to no greater extent than any similar property owned or operated by the Lessee, and (ii) in the event of loss or damage affecting both the units of the Leased Equipment and other property owned or operated by the Lessee, no more than a pro rata portion of such self-insurance would be applicable to the units of the Leased Equipment.

(c) All such insurance shall be effected under policies (which may be blanket policies) issued by insurers.

currently insuring the properties of the Lessee or other insurers reasonably satisfactory to the Lessor and the Agent, and all such policies shall (i) be amended by endorsement to name the Lessor, the Agent and each of the Lenders as additional insureds, as their respective interests may appear, (ii) provide that payment for any loss or damage under subdivision (a) of this section 9.3 shall be made by check payable to the Agent, as assignee of the Lessor, (iii) provide that if such insurance is cancelled or materially changed for any reason whatsoever, or if such insurance is allowed to lapse for nonpayment of premium, such cancellation or material change or lapse shall not be effective as to the Lessor, the Agent or any of the Lenders for 30 days after receipt by the Lessor, the Agent or any of the Lenders, respectively, of written notice from such insurers of such cancellation or lapse, and (iv) provide that in respect of the interests of the Lessor, the Agent and each of the Lenders in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the interests of the Lessor, the Agent and each of the Lenders, as they appear, regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies by the Lessee or any other person. The Lessee will deliver to the Lessor and the Agent, annually in conjunction with the delivery of the statement referred to in section 10.1, certificates as to all policies in force with respect to the Leased Equipment, demonstrating compliance with the provisions of this section 9.3.

(d) The Agent, as assignee of the Lessor, shall be entitled to receive any insurance proceeds or condemnation payments in respect of any units of the Leased Equipment and shall, if no Default or Event of Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Lessee (i) in the case of any such insurance proceeds or condemnation payments received in respect of any unit of the Equipment suffering a Casualty Occurrence, upon receiving payment of the Casualty Value hereunder for such units and (ii) in the case of any such insurance proceeds or condemnation payments received in respect of any unit of the Leased Equipment not suffering a Casualty Occurrence, upon proof satisfactory to the Agent that any damage to such unit in respect of which such insurance proceeds were paid has been fully repaired or that any unit in respect of which

such condemnation payments were made has been returned to the full possession of the Lessee. If a Default or Event of Default shall have occurred and be continuing, the Agent shall retain any such insurance proceeds or condemnation payments until either the preceding sentence of this section 9.3(d) becomes applicable or a Declaration of Default (as defined in the Conditional Sale Agreement) is made, and thereafter shall apply such insurance proceeds or condemnation payments as set forth in the preceding sentence of this section 9.3(d) or in section 19(g) of the Conditional Sale Agreement.

#### SECTION 10. REPORTS AND INSPECTIONS.

10.1 Annual Reports. On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will cause to be furnished to the Lessor and the Agent an accurate statement setting forth, as of the preceding December 31, the amount, description and numbers of the units of the Leased Equipment (a) then leased hereunder and/or covered by the Conditional Sale Agreement, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and setting forth the serial numbers of the units of rolling stock to which the units of the Leased Equipment then leased hereunder and/or covered by the Conditional Sale Agreement are attached and such other information regarding the condition and state of repair of the Leased Equipment as the Lessor or the Agent may reasonably request, and stating that, in the case of all units of the Leased Equipment repainted or repaired during the period covered by such statement, the markings required by section 11 of this Lease and by section 11 of the Conditional Sale Agreement have been preserved or replaced.

10.2 Inspection. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives (who may be employees of the Agent or the Lenders), to inspect any units of the Leased Equipment and the Lessee's records with respect thereto (including those relating to use, if any, of such units outside the United States in order to demonstrate compliance with section 13(b)) at such reasonable times as the Lessor may request during the continuance of this Lease, and the Lessee shall make available any information reasonably requested by the Lessor with respect to any units of the Leased Equipment.

SECTION 11. MARKING OF EQUIPMENT.

(a) The Lessee will cause each unit of the Leased Equipment to be kept numbered with the serial number as set forth in Schedule I or II to this Lease, as the case may be, or, in the case of Leased Equipment not there listed, such serial number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Leased Equipment, and will keep plainly, distinctly, permanently and conspicuously marked on each side of each such unit, in letters not less than one inch in height, the following legend: "This Rack Owned by The Bank of New York Subject to a Security Interest in Favor of La Salle National Bank, as Agent", or other appropriate words designated by the Agent, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested by the Agent in order to protect the Lessor's title to and property in, and the Agent's security interest in, such unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement, or as may be required in connection with the transfer by the Lessor or the Agent of its respective interest in the Leased Equipment. The Lessee will not place any such unit in operation or exercise any control over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not knowingly permit the serial number of any unit of the Leased Equipment to be changed unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease or the Conditional Sale Agreement or any Uniform Commercial Code financing statement or similar instrument relating to either thereof shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Agent and the Lessor with an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Agent's and the Lessor's interests in such units and that no filing, recording, depositing or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Lessor in such units.

(b) Except as provided in section 11(a), the Lessee will not allow the name of any person, association or corporation to be placed on any unit of the Leased Equipment as a designation that might be interpreted as a

claim of ownership, provided that the Lessee may cause the Leased Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Lessee or its affiliates to use the Leased Equipment as permitted under this Lease.

**SECTION 12. COMPLIANCE WITH LAWS AND RULES;  
MODIFICATION OF EQUIPMENT.**

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12.1 Compliance with Laws and Rules. During the term of this Lease, the Lessee will comply, and will take such action as shall be reasonably necessary to cause every user of the Leased Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Leased Equipment) with all laws of the jurisdictions in which its or such users' operations involving the Leased Equipment may extend and with rules and regulations of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Leased Equipment, and in the event that any such law, rule or regulation requires any alteration, replacement or modification of or to any unit of the Leased Equipment, or any part thereof, the Lessee will comply with such law, rule or regulation at its own expense, provided that the Lessee may, in good faith and after giving written notice to the Lessor and the Agent, contest the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the opinion of the Lessor and the Agent, adversely affect the property or rights of the Lessor or the security interest or rights of the Agent or the Lenders under this Lease or the Conditional Sale Agreement or otherwise in the Leased Equipment.

12.2 Modification of Equipment. The Lessee, which is, pursuant to section 9.1, responsible for any and all replacements, repairs or substitutions of parts of the Leased Equipment required to keep it in good operating order, repair and condition, may from time to time, upon receiving the written consent of the Lessor, make such additional alterations and modifications of and additions to the Leased Equipment as the Lessee may deem desirable in the proper conduct of its business, provided that no such additional alteration, modification or addition diminishes the value of the Leased Equipment. All replacements, repairs, substitutions, alterations and modifications shall become the



property of the Lessor, as shall all additions if not removable without damage to or impairing the value of the Leased Equipment and so long as no Event of Default has occurred and is continuing. The Lessee will bear all costs incurred in connection with the use and operation of the Leased Equipment including, but not limited to, labor, material, energy or supplies. In the event the Lessee shall make any replacement, repair, substitution, alteration, modification or addition to any unit of the Leased Equipment pursuant to section 9.1 or this section 12.2, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the nature thereof and specifying the value thereof with respect to each unit of the Leased Equipment.

### SECTION 13. POSSESSION AND USE.

(a) The Lessee, so long as no Default or Event of Default, or Conditional Sale Event of Default, shall have occurred and be continuing, shall be entitled to the possession of the Leased Equipment and to the use thereof by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad rolling stock of the Lessee or any such affiliate is regularly operated pursuant to contract, and shall also be entitled to permit the use of the Leased Equipment upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Leased Equipment.

(b) A unit of the Leased Equipment may be attached or affixed to a unit of railroad rolling stock only if (i) such unit of railroad rolling stock is owned or leased by Trailer Train Company, (ii) such attachment or affixing does not interfere with the Lessor's title to or the Agent's security interest in such unit or restrict the repossession of such unit and (iii) such unit may be removed from the railroad rolling stock to which it is attached or affixed within a reasonable amount of time and without damaging such railroad rolling stock or impairing the value thereof. The Lessee shall not use the Leased Equipment in regular use, or assign the Leased Equipment for regular use, outside of the United States of America.

SECTION 14. PROHIBITION AGAINST LIENS.

(a) The Lessee will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party which, if unpaid, might become a Lien (other than an encumbrance created by the Lessor or the Agent and not related to its respective interest in the Leased Equipment) on or with respect to the Leased Equipment, or any unit thereof, or the interest of the Lessor, the Agent or the Lessee in the Leased Equipment, and will promptly discharge any such Lien which arises.

(b) This covenant will not be deemed breached by reason of Liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent, or by reason of the Lien of the First Mortgage (as defined in the Participation Agreement) on the Lessee's leasehold interest under this Lease.

SECTION 15. DISCLAIMER OF WARRANTIES; INDEMNIFICATION.

15.1 Disclaimer of Warranties by Lessor. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, OR AS TO THE COMPLIANCE WITH SPECIFICATIONS OF, THE LEASED EQUIPMENT AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE LEASED EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO ANY SUCH UNITS OF THE LEASED EQUIPMENT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SUCH UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE, OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (a) any liability, loss or damage caused or alleged to be caused directly or indirectly by any units of the Leased Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (b) the use, operation or performance of any such units or any risks relating thereto; (c) any interruption of service, loss of business or anticipated profits or consequential damages; or (d) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any such units. The Lessee's delivery of a

Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all units of the Leased Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

15.2 Lessee's Indemnity. The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Agent and the Lenders, and their respective successors, assigns, agents, employees, officers and directors, from and against all losses, damages, injuries, liabilities, suits, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (a) the entering into or the performance, or the enforcement of performance (whether or not suit is instituted), of the Conditional Sale Agreement or this Lease, or any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby, (b) the ownership by the Lessor of, or the security interest of the Agent in, any unit of the Leased Equipment, (c) the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any unit of the Leased Equipment, (d) any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any unit of the Leased Equipment resulting in damage to property or injury or death to any person, including without limitation any claim based upon the doctrines of product liability or strict liability in tort, or (e) the transfer of title to the Equipment by the Agent pursuant to any provision of the Conditional Sale Agreement. The Lessee further agrees to indemnify, protect and hold harmless the Lenders against all costs and expenses incurred by them pursuant to section 11.2 of the Participation Agreement in connection with the Lenders' indemnification of the Agent, and advances made by the Lenders to the Agent, with respect to action taken by the Agent under the Participation Agreement, the Conditional Sale Agreement or this Agreement. The indemnities arising under this section 15.2 shall continue in full force and effect notwithstanding the delivery of the Leased Equipment or the full payment and performance of all obligations under this Lease or the expiration or termination of the term of this Lease and are expressly made for the benefit of, and shall be enforceable by the Lessor, the Agent and any of the Lenders and their respective successors and assigns, provided that the foregoing indemnification shall not

apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness. Nothing in this section 15.2 shall constitute a guarantee by the Lessee of the Conditional Sale Indebtedness or of the residual value of any unit of the Leased Equipment.

#### SECTION 16. ASSIGNMENTS.

16.1 By the Lessor. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The rights of the Lessor hereunder shall inure to the benefit of the Agent as assignee under the Lease Assignment in the manner and to the extent therein provided.

16.2 By the Lessee. Without the prior written consent of the Lessor and the Agent, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Leased Equipment or any units thereof, and any such assignment or transfer without such consent shall be void. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the units of the Equipment, except to the extent permitted by the provisions of section 13(a). Nothing in this section 16.2 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Leased Equipment or possession of the Leased Equipment as permitted under section 14.4 of the Participation Agreement.

#### SECTION 17. EVENTS OF DEFAULT; TERMINATION AND OTHER REMEDIES.

17.1 Events of Default, Termination, etc. If any one or more of the following events or conditions ("Events of Default") shall occur and be continuing:

(a) the Lessee shall fail to pay in full any Interim Rent, Base Rent, Hulk Rent, Additional Rent, Casualty Value or other sum payable hereunder by the Lessee to the Lessor when such payment thereof shall be due hereunder and such failure shall continue for more than 10 days thereafter; or

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Leased Equipment, or any units or parts thereof, or the Lessee shall fail to perform or comply with any term of section 8, 9.3, 11 or 14; or

(c) the Lessee shall, for more than 30 days after the Lessor or the Agent shall have demanded in writing performance thereof, fail or refuse to perform or comply with any other covenant, condition, agreement, term or provision on the part of the Lessee contained in this Agreement or in any agreement entered into concurrently herewith relating to the lease of the Leased Equipment; or

(d) the Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or commence proceedings under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, make an assignment for the benefit of its creditors, consent to the appointment of a receiver of itself or of the whole or any substantial part of its properties, or on a petition in bankruptcy filed against the Lessee, be adjudicated a bankrupt, or an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Lessee, a receiver of the Lessee or of the whole or any substantial part of its properties, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of such appointment, or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Lessee under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry of such order, judgment or decree, or a stay of such proceedings shall be thereafter set aside, or under the provision of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Lessee or of the whole or any substantial part of its properties, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control; or

(e) any obligation of the Lessee for the payment of borrowed money shall not be paid promptly at maturity or within any grace period permitted, whether such maturity be by acceleration or otherwise, and such default shall not have been waived, or shall be declared due and payable prior to the maturity thereof, and such declaration shall not have been rescinded; or

(f) the Lessee shall default in any obligation to pay rent or other sums under the lease or leases from Trailer Train Company relating to the units of railroad rolling stock to which the units of the Leased Equipment are attached, and such default shall not have been waived or cured pursuant to the terms thereof; or

(g) any representation or warranty made by the Lessee hereunder or under the Participation Agreement or any other Basic Agreement (as defined in the Participation Agreement), or by any officer or representative of the Lessee in any document or certificate furnished to the Lessor, the Agent or the Lenders in connection herewith and therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of an Event of Default and while it is continuing, the Lessor, at its option, may:

(x) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(y) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Leased Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may:

(i) directly or by its agents, enter upon the premises of the Lessee or other premises where any of the Leased Equipment may be and take possession of all or any of the Leased Equipment and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Leased Equipment for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom;

(ii) retain all rents and additional sums theretofore paid by the Lessee hereunder;

(iii) recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period); and

(iv) recover forthwith from the Lessee as liquidated damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(A) a sum, with respect to each unit of the Leased Equipment, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for such unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or

(B) an amount equal to the excess, if any, of the Casualty Value as of the Rent Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such unit at such time;

provided that in the event the Lessor shall have sold any unit of the Leased Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to

the preceding clauses (A) and (B) of this paragraph (iv) with respect to such unit, may, if it shall so elect, demand that the Lessee pay on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such unit, as of the Rent Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and legal expenses and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any unit of the Leased Equipment.

17.2 Remedies Cumulative; Lessee's Waiver of Rights; No Waiver by Lessor. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

#### SECTION 18. RETURN OF LEASED EQUIPMENT UPON DEFAULT.

(a) If this Lease shall terminate pursuant to section 17, the Lessee shall forthwith deliver possession of the Leased Equipment to the Lessor. Each unit of the Leased Equipment so delivered shall be in the same operating order, repair and condition as when originally delivered



to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any such unit or units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(i) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any such unit is interchanged) place such units upon such storage tracks of the Lessee as the Lessor reasonably may designate, or, at the option of the Lessor, remove the units of the Leased Equipment from the units of railroad rolling stock to which they have been attached and place such units of the Leased Equipment at such location as the Lessor may reasonably designate;

(ii) permit the Lessor to store such units on such tracks or at such location at the risk of the Lessee without charge for insurance, rent or storage until such units have been sold, leased or otherwise disposed of by the Lessor; and

(iii) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, transporting and detaching of units of the Leased Equipment as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, transport and detach units of the Leased Equipment. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Leased Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same.

(b) All amounts earned in respect of any unit of the Leased Equipment after the end of the term with respect to such unit or after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any unit of the Leased Equipment is not assembled, delivered

and stored, as hereinabove provided, within 60 days after the end of such term or such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such unit for each such day exceeds the actual earnings received by the Lessor on such unit for each such day.

(c) Without limiting the obligation of the Lessee under the foregoing provisions of this section 18, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any unit of the Leased Equipment to the Lessor, to demand and take possession of such unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such unit at the time.

#### SECTION 19. RIGHT OF LESSOR TO PERFORM LESSEE'S COVENANTS, ETC.

Should the Lessee fail to make any payment (other than any payment required hereunder to be made to the Lessor) or to do any act as provided by this Lease, then the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Leased Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Leased Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within ten (10) days of notice thereof.

#### SECTION 20. NO RENEWAL OPTION.

The Lessee shall not have the option to renew or otherwise extend the term of this Lease.

#### SECTION 21. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

(a) The Lessor intends to retain the units of the Leased Equipment at the expiration of the term of this

Lease. As soon as practicable on or after the expiration of the term of this Lease with respect to any unit of the Leased Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, detach each unit of the Equipment from the unit of railroad rolling stock to which it had been attached, deliver possession of such unit to the Lessor at such point on the Lessee's lines as the Lessor may designate, or, in the absence of such designation, as the Lessee may select and permit the Lessor to store such unit at such point on the Lessee's lines as it may select, in facilities furnished by the Lessee, for a period not exceeding 180 days, and transport the same, at any time within such 180-day period, to any reasonable place on the lines of railroads operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be under this section in amounts and pursuant to the requirements of section 9.3. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any unit of the Leased Equipment, to inspect the same. Each unit returned to the Lessor pursuant to this section 21 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have loading devices in good operating condition, (iii) meet the then effective Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction over such unit and (iv) have the securement devices for the then current model cars. The detaching, delivery, storage and transporting of the Leased Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport such units, and the Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this section 21. All gross amounts earned in respect of the units of the Leased Equipment after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor, but

in no event shall such amounts be less than the Base Rent for each month of such delay pro-rated for partial months. In the event any unit of the Leased Equipment is not detached, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee, shall in addition, pay to the Lessor for each day thereafter an amount equal to a percentage of the Purchase Price of such units, which shall be .0281% in the case of New Equipment and .0361% in the case of Reconstructed Equipment.

## SECTION 22. APPLICABLE STATE LAWS; WAIVERS.

Any provision of this Lease prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Lease, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Lessee to the full extent permitted by law.

Except as otherwise provided in this Lease, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Leased Equipment, or any one or more units thereof and any other requirements with respect to the enforcement of the Lessor's rights under this Lease and of the Agent's rights under this Lease and the Lease Assignment.

## SECTION 23. FURTHER ASSURANCES; RECORDING; REPORTS.

(a) The Lessee will cause to be done, executed, acknowledged and delivered all such further acts, conveyances and assurances as the Lessor, or the Agent shall require for accomplishing the purposes of this Lease and the Conditional Sale Agreement. The Lessee will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of this Lease, the Conditional Sale Agreement, the Lease Assignment, the Transfer Agreement (as defined in the Participation Agreement) or any amendments and supplements to any thereof, and any financing statements, continuation statements or other instruments (including, without limitation, any financing or other statements or instruments relating to a change of name or location by the Lessor or the Lessee), in such manner and in such places as is necessary, or as shall be deemed desirable by the Lessor, the Agent, the Lenders or counsel thereto, to establish, perfect, preserve and protect, so long as

the Conditional Sale Indebtedness shall remain outstanding, the security interests created by the Conditional Sale Agreement, the Lease Assignment and the Transfer Agreement. The Lessee will furnish to the Lessor, the Lenders and the Agent annually after the execution hereof (but not later than March 15th of each year), commencing with the year 1980, an opinion of counsel satisfactory to the Lessor and the Lenders stating either: (i) that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording and re-filing of this Lease, the Conditional Sale Agreement, the Lease Assignment, the Transfer Agreement (and any amendments or supplements to any thereof) and any financing statements or other instruments as is necessary to maintain the perfection of the security interests created thereby and reciting the details of such action; or (ii) that in the opinion of such counsel no such action is necessary to maintain the perfection of such security interests.

(b) The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of, or the security interest of the Agent in, the Leased Equipment or the leasing thereof to the Lessee, and to deliver, upon the request of the Lessor, an Officers' Certificate stating that no Default or Event of Default has occurred and is continuing.

#### SECTION 24. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of this Lease shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fourth Business Day after deposit thereof in the United States mails, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Lessor:

The Bank of New York  
48 Wall Street  
New York, New York 10015  
Attention: Deno D. Papageorge  
Vice President

If to the Lessee:

St. Louis - San Francisco  
Railway Company  
3253 East Trafficway  
Springfield, Missouri 65802  
Attention: Hampton B. Parker  
Vice President -  
Finance and  
Treasurer

If to the Agent:

La Salle National Bank  
135 South La Salle Street  
Chicago, Illinois 60690  
Attention: Roland K. Weber  
Vice President

If to the Lender:

Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Securities Division

or, as to any such person or any assignee of any such person, to such other address as such person or such assignee may from time to time specify to the other such persons in writing.

SECTION 25. ENFORCEMENT BY AGENT; ORIGINAL COUNTERPART.

(a) If and so long as this Lease is assigned to the Agent (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall also apply and refer to the Agent and any successors thereto unless the context shall otherwise require, provided that the Agent shall not be subject to any liabilities or obligations under this Lease. The fact that the Agent and the Lenders are specifically named in certain provisions of this Lease shall not be construed to mean that the Agent or the Lenders (and any successors thereto) are not entitled to the benefits of other provisions where only the Lessor is named or where only the Agent or the Lenders, as the case may be, are named.

(b) To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Agent on the signature page thereof.

## SECTION 26. MISCELLANEOUS.

26.1 Waivers; Modifications. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought; no such instrument shall be effective unless a signed copy thereof shall have been delivered to the Lessor, the Lessee and the Agent.

26.2 Binding Effect; Successors and Assigns. The terms and provisions of this Lease and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Lease) assigns.

26.3 Captions; References. The captions in this Lease and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections and subdivisions without reference to the document in which they are contained are references to this Lease.

26.4 Governing Law. This Lease is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their respective

officers thereunto duly authorized as of the day and year first above written.

[Seal]

THE BANK OF NEW YORK

Attest:

(Title)

*Frank M. Murphy*  
*Deputy Secretary*

By

(Title)

*Wm. D. Boylston*  
*Vice President*

ST. LOUIS-SAN FRANCISCO RAILWAY  
COMPANY

[Seal]

Attest:

(Title)

*J. M. Butler*  
*Asst. Secretary*

By

(Title)

*Donald E. Engle*  
*Vice President*



ALL RIGHT, TITLE AND INTEREST OF THE BANK OF NEW YORK, AS LESSOR, IN AND TO THIS EQUIPMENT LEASE HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF LA SALLE NATIONAL BANK, AS AGENT PURSUANT TO THE ASSIGNMENT OF LEASE AND AGREEMENT DATED AS OF MARCH 1, 1979 BETWEEN THE BANK OF NEW YORK AND LA SALLE NATIONAL BANK, AS AGENT (AS SUCH ASSIGNMENT OF LEASE AND AGREEMENT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED). AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS EQUIPMENT LEASE HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 25(b), NO SECURITY INTEREST IN THIS EQUIPMENT LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE AGENT ON THE SIGNATURE PAGE THEREOF.

STATE OF NEW YORK )  
 ) ss.:  
 COUNTY OF NEW YORK )

On the 18<sup>th</sup> day of March, in the year 1979,  
 before me personally came Devo D. Papageorge,  
 to me known, who being by me duly sworn, did depose and say  
 that he resides at R.D. 1, Yorkley, Pa.,  
 that he is Vice President of The  
 Bank of New York, the corporation described in and which  
 executed the above instrument; that he knows the seal of  
 said corporation; that one of the seals affixed to said  
 instrument is such corporate seal; that it was so affixed  
 by order of the Board of Directors of said corporation,  
 and that he signed his name thereto by like order.

Debra A. McIntosh  
 Notary Public

[NOTARIAL SEAL]

DEBRA A. MCINTOSH  
 Notary Public, State of New York  
 No. 41-4654099  
 Qualified in Queens County  
 Commission Expires March 30, 1979

STATE OF MISSOURI )  
 ) ss.:  
 CITY OF ST. LOUIS )

On this 19<sup>th</sup> day of March 1979, before me per-  
 sonally appeared DONALD E. ENGLE, to me  
 personally known, who, being by me duly sworn, says that he  
 is a Vice President of St. Louis-San Francisco Railway  
 Company, that one of the seals affixed to the foregoing  
 instrument is the corporate seal of said corporation,  
 that said instrument was signed and sealed on behalf of said  
 corporation by authority of its Board of Directors, and he  
 acknowledged that the execution of the foregoing instrument  
 was the free act and deed of said corporation.

My Commission Expires August 2, 1981

Mary L. Allhoff  
 Notary Public/Mary L. Allhoff

[NOTARIAL SEAL]

Companion used within one for the County of St. Louis, Missouri,  
 which adjoins City of St. Louis, Missouri, where this act was  
 performed.

## SCHEDULE I

New EquipmentQuantity

125

SLSF  
Serial NumbersSLSF R-226 to R-350  
(inclusive)

## SCHEDULE II

Reconstructed Equipment

<u>Quantity</u>	<u>SLSF</u> <u>Serial Numbers</u>
40	SLSF R-351 to R-390 (inclusive)

## SCHEDULE III

Casualty Values as Percentage  
of Purchase Price of Leased Equipment

TABLE ATABLE B

<u>Rent Payment Date*</u>	<u>New Equipment</u>	<u>Reconstructed Equipment</u>
1	109.93%	111.74%
2	108.33	108.70
3	108.99	109.01
4	107.11	105.65
5	106.91	104.89
6	104.80	101.27
7	95.87	92.62
8	93.36	88.52
9	91.72	85.96
10	88.99	81.62
11	78.78	71.38
12	75.67	66.59
13	72.96	62.66
14	69.73	57.68
15	58.70	46.32
16	55.17	40.95
17	51.78	36.16
18	48.04	30.68
19	44.30	25.63
20	40.35	21.00
21	36.41	-----
22	32.32	-----
23	28.18	-----
24	23.93	-----

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- \* The first Rent Payment Date shall be the date of the sixth calendar month after the Cut-off Date corresponding with the Cut-off Date and each successive Rent Payment Date shall be the same date of each successive sixth calendar month thereafter (or if any such month does not have a corresponding date, then the date of the last day of such month).